

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

TRANSLink Development Company, LLC	Docket Nos. ER03-83-004, ER03-83-005 and ER03-83-006
------------------------------------	--

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER03-86-003 ER03-86-006 and ER03-86-007
---	---

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER02-111-003 and ER02-652-002
---	--

ORDER CONDITIONALLY ACCEPTING REVISED TARIFF SHEETS
AND TERMINATING PROCEEDINGS

(Issued December 29, 2004)

1. In this order, the Commission conditionally accepts revised tariff sheets that delete provisions of Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO's) open access transmission tariff (OATT) that apply to TRANSLink Transmission Company LLC (TRANSLink) due to TRANSLink's suspension of development activities. Midwest ISO is directed to delete Part III of Schedule 10 of the OATT that provides for unbundled regional transmission organization (RTO) services to independent transmission companies (ITCs) since, with the dissolution of TRANSLink, no ITCs currently utilize or propose to utilize those provisions.

I. Background

A. Docket No. ER02-111-000

2. On October 16, 2001, in Docket No. ER02-111-000, Midwest ISO filed revisions to Schedule 10¹ of its OATT that, among other things, provide ITCs that join Midwest ISO the option to contract with Midwest ISO for unbundled RTO² services. Midwest ISO explained that it had been working with TRANSLink, a proposed ITC, on operational protocols and procedures that would govern the relationship between Midwest ISO and TRANSLink. As a result of those discussions, it was agreed that TRANSLink would directly perform certain RTO functions for the facilities it owns or controls, while Midwest ISO would perform the remaining RTO functions required by Order No. 2000. Midwest ISO explained that, in order to equitably charge TRANSLink, and in turn TRANSLink's customers, for only those services provided by Midwest ISO, instead of bundling all RTO services under Part II of Schedule 10 of Midwest ISO's OATT, Midwest ISO agreed to propose a "menu of services" approach to providing RTO services to ITCs. Midwest ISO proposed new Part III of Schedule 10 of the Midwest ISO OATT to provide for such unbundled RTO services.

3. In an order issued on December 14, 2001,³ the Commission accepted and suspended Midwest ISO's proposed revisions to Schedule 10 of its OATT and established hearing and settlement judge procedures to address contested issues. As relevant here, on June 27, 2003, Midwest ISO, TRANSLink, and the Joint Defense Group⁴ filed, in Docket Nos. ER02-111-003 and ER02-652-002, an Offer of Settlement

¹ Schedule 10, ISO Cost Recovery Adder, is the mechanism under which Midwest ISO recovers its cost of operations that are not recovered under Schedule 1, Scheduling, System Control and Dispatch Service, Schedule 16, Financial Transmission Rights Administrative Service, and Schedule 17, Energy Market Support Administrative Service.

² *Regional Transmission Organizations, Order No. 2000*, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000).

³ *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,268 (2001), *reh'g denied*, 98 FERC ¶ 61,267 (2002).

⁴ The Joint Defense Group consists of: Wisconsin Public Service Corporation; Upper Peninsula Power Company; Madison Gas & Electric Company; Coalition of Midwest Transmission Customers; Industrial Energy Users-Ohio; and Wisconsin Electric Power Company.

addressing the issues in the proceeding concerning Midwest ISO's proposal to provide unbundled RTO services to ITCs under Part III of Schedule 10 of its OATT.

B. Docket Nos. ER03-83-000 and ER03-86-000

4. On October 24, 2002,⁵ TRANSLink Development Company LLC⁶ (TRANSLink Development) filed, in Docket No. ER03-83-000, proposed rate schedules under the Midwest ISO OATT for service on the TRANSLink transmission system. Also on October 24, 2002, Midwest ISO filed, in Docket No. ER03-86-000, proposed changes to its OATT to allow certain RTO functions to be performed directly by ITCs. One of the changes included Midwest ISO's proposal to revise Part III of Schedule 10 of its OATT to require ITCs to purchase certain services that it (Midwest ISO) had proposed as optional in ER02-111-000.

5. In separate orders issued on December 19, 2002, the Commission: (1) accepted the tariff sheets proposed in Docket No. ER03-83-000, as modified, suspended them for a nominal period to become effective December 24, 2002, and established hearing and settlement judge procedures;⁷ and (2) conditionally accepted the proposed tariff revisions filed by Midwest ISO in Docket No. ER03-86-000.⁸ As relevant here, in the December 19, 2002 Order, the Commission directed Midwest ISO to revise Schedule 10, section III.A.1 (Tariff Administration Services) and section III.A.2 (Business Services) to provide that these services were mandatory for ITCs, not optional, consistent with Midwest ISO's clarification of its intentions in its answer to certain protests.

6. TRANSLink Development filed a request for clarification or, in the alternative, rehearing of the Commission's December 19, 2002 Order. TRANSLink Development questioned the Commission's directive to Midwest ISO to revise Schedule 10 to provide that Tariff Administration Services and Business Services are mandatory for ITCs. TRANSLink Development stated that, in earlier orders on the delegation of RTO services by RTOs to ITCs, the Commission allowed ITCs to perform such services. TRANSLink Development requested that the Commission clarify that the delegation of functions to

⁵ *TRANSLink Transmission Company, LLC*, 101 FERC ¶ 61,316 (2002).

⁶ TRANSLink Development was established as an interim company to, among other things, centralize the efforts of the TRANSLink participants with regard to the establishment and formation of TRANSLink and represent the interests of TRANSLink prior to its formation.

⁷ *TRANSLink Development Company, LLC*, 101 FERC ¶ 61,316 (2002).

⁸ *Midwest Independent Transmission System Operator, Inc.*, 101 FERC ¶ 61,317 (2002) (December 19, 2002 Order).

ITCs that the Commission previously approved remained unchanged by the December 19, 2002 Order. On January 31, 2003, Midwest ISO filed a late motion for clarification of the Commission's December 19, 2002 Order. Midwest ISO stated that it had intended to modify Part III of Schedule 10 of its OATT to provide that Schedule 10, section III.A.3 (Reliability Services) is mandatory, but that Tariff Administration Services and Business Services are optional for an ITC, not mandatory. Thus, Midwest ISO claimed that it had misstated its intentions in its answer in response to protests to its original filing and only became aware of its mistake when it reviewed TRANSLink Development's request for clarification. The Joint Defense Group filed a rehearing request asking the Commission to reject Midwest ISO's late-filed motion for clarification.

7. In an order issued on May 21, 2003,⁹ the Commission granted Midwest ISO's motion for clarification and conditionally accepted Midwest ISO's proposed revisions to Schedule 10 to provide that Tariff Administration Services and Business Services were optional for ITCs. The Commission made its acceptance of Midwest ISO's proposed revisions to Schedule 10 subject to the outcome of proceedings in Docket Nos. ER02-111-003 and ER02-652-002, in which the applicability to ITCs of Midwest ISO's Schedule 10 administrative cost adder was being addressed. The Commission clarified that its acceptance of the proposed revisions to Schedule 10 was not intended to affect the Commission's prior decisions regarding the performance of RTO functions by ITCs.

8. The Joint Defense Group sought rehearing of the May 21, 2003 Order, arguing that the Commission should have decided whether Tariff Administration Services and Business Services should be mandatory or optional for ITCs. According to the Joint Defense Group, the Commission's failure to decide this issue in Docket No. ER03-86-003 will prevent the parties from implementing an Offer of Settlement filed in Docket Nos. ER02-111-003 and ER02-652-002, which contains alternative provisions depending upon a final determination by the Commission on the mandatory/optional issue.

9. TRANSLink Development subsequently announced that it had suspended development activities indefinitely, citing regulatory and market uncertainty.¹⁰ In light of this, on September 22, 2004, the Commission's staff issued letters to the parties in Docket Nos. ER02-111-003 and ER02-652-002; ER03-83-004; and ER03-86-002 and ER03-86-003, stating that it appeared that outstanding issues concerning the revisions to

⁹ *Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,207 (2003) (May 21, 2003 Order).

¹⁰ December 17, 2003 letter on behalf of the Nebraska Public Power District filed in Docket Nos. ER03-83-000 and ER03-86-000.

the Midwest OATT submitted by Midwest ISO and TRANSLink Development in those proceedings had been overtaken by events and had become moot.

10. On October 22, 2004, the Joint Defense Group filed a response to the September 22, 2004 staff letter stating that the Commission's rulings in the May 21, 2003 Order are in error and establish erroneous Commission precedent. The Joint Defense Group further argues that the rulings relate to language in the Midwest ISO OATT that applies generally to ITCs, and is not limited to the particular circumstances of TRANSLink. As a result, the Joint Defense Group believes that the issues raised in its request for rehearing of the May 21, 2003 Order in Docket No. ER03-86-003 remain relevant and asks the Commission to issue a merits-based order addressing these issues, or in the alternative, vacate the May 21, 2003 Order.

C. Instant Filing, Notice of Filing and Comments

11. Due to the dissolution of TRANSLink and in response to the Commission staff letters mentioned above, on October 29, 2004, as amended on November 3, 2004, Midwest ISO filed proposed revisions to its OATT to remove all references to TRANSLink. Among other changes, the filing includes revisions to Schedule 10 of Midwest ISO's OATT to "return it to its original context prior to the incorporation of TRANSLink." Midwest ISO requests an effective date of October 30, 2004, for the proposed tariff revisions. Notice of the Midwest ISO's filing was published in the *Federal Register*, 69 Fed. Reg. 65,419 (2004), with interventions or protests due on or before November 19, 2004. Notice of Midwest ISO's amended filing was published in the *Federal Register*, 69 Fed. Reg. 67,568 (2004), with interventions or protests due on or before November 23, 2004.

12. On November 19, 2004, the Joint Defense Group filed comments stating that the provisions for unbundling of charges for RTO services for ITCs in Part III of Schedule 10 remain unchanged by Midwest ISO's proposed revisions and, thus, the mandatory/optional issue remains unresolved by Midwest ISO's proposal.

II. Discussion

13. Midwest ISO has proposed revisions to its OATT to delete all references to TRANSLink, including deletion of TRANSLink-specific schedules and attachments to the OATT. However, Midwest ISO's filing leaves unchanged the provisions for unbundling of RTO services for ITCs in Part III of Schedule 10, which are pending in Docket Nos. ER02-111-003, ER02-652-002 and ER03-86-003. While these provisions are generic, *i.e.*, they are available to all ITCs rather than being TRANSLink-specific, Midwest ISO filed its proposed unbundling of RTO services for ITCs specifically to accommodate the request by TRANSLink for the option to purchase from Midwest ISO only those RTO services that TRANSLink would not directly perform for the facilities it

owns or controls. No ITCs are utilizing Midwest ISO's proposed unbundling of RTO services in Part III of Schedule 10 and, with the dissolution of TRANSLink, there are no ITCs proposing to utilize them.¹¹ Accordingly, we will direct Midwest ISO to delete the provisions for unbundled RTO services for ITCs from Schedule 10 of its OATT, without prejudice to Midwest ISO refiling such a proposal in the future to accommodate a proposed ITC.

14. Our action here moots the issue raised by the Joint Defense Group as to whether certain unbundled RTO services should be mandatory or optional. Contrary to the argument of the Joint Defense Group, the May 21, 2003 Order does not establish precedent with respect to the mandatory/optional issue. Rather, it found that issue should be addressed in the hearing in Docket Nos. ER02-111-003 and ER02-652-002. Because we are directing Midwest ISO to eliminate the provisions for unbundled RTO services for ITCs from Schedule 10 of its OATT, the settlement filed in Docket Nos. ER02-111-003 and ER02-652-002 concerning Midwest ISO's proposal to provide unbundled RTO services to ITCs is dismissed as moot. As a result, Joint Defense Group's concern with regard to the implementation of the settlement is moot as well. We hereby terminate the hearing in Docket Nos. ER02-111-003 and ER02-652-002.

15. Our review of Midwest ISO's filing indicates that in some instances, Midwest ISO has submitted only redlined tariff sheets without submitting clean tariff sheets reflecting the proposed revisions or cancellation of the tariff sheets as required by Part 35 of the Commission's regulations. Accordingly, the proposed revisions are hereby accepted for filing to become effective October 30, 2004,¹² conditioned upon Midwest ISO filing complete and conforming tariff sheets as required by Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2004), and removing all unbundling provisions under Part III of Schedule 10 of its OATT as discussed above, within 30 days from the date of this order.

¹¹ The only ITC that performs RTO functions, GridAmerica LLC, has not availed itself of the option under Part III of Schedule 10 to purchase RTO services from Midwest ISO on an unbundled basis; rather, GridAmerica LLC is compensated by Midwest ISO for the RTO functions that it performs, and purchases RTO services from Midwest ISO on a bundled basis under Part II of Schedule 10. *Ameren Services Company*, 101 FERC ¶ 61,320 (2002).

¹² See, e.g., *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

The Commission orders:

(A) Midwest ISO's revised tariff sheets are hereby conditionally accepted and made effective October 30, 2004, as discussed in the body of this order.

(B) Midwest ISO is hereby directed to delete Part III of Schedule 10 of its OATT, within 30 days from the date of this order, as discussed in the body of this order.

(C) Midwest ISO is hereby directed to file revised tariff sheets in compliance with Part 35 of the Commission's regulations, 18 C.F.R. Part 35 (2004), within 30 days from the date of this order, as discussed in the body of this order.

(D) The hearing in Docket Nos. ER02-111-003 and ER02-652-002 is hereby terminated.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.